

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

|                                 |   |                        |
|---------------------------------|---|------------------------|
| Kevin Braithwaite,              | ) |                        |
|                                 | ) |                        |
| Plaintiff,                      | ) |                        |
|                                 | ) |                        |
| v.                              | ) | C.A. No. 04-1542-GMS   |
|                                 | ) |                        |
| Thomas Carroll, Warden, et al., | ) | Trial by Jury Demanded |
|                                 | ) |                        |
| Defendants.                     | ) |                        |

**STATE DEFENDANT VIOLET DUNN’S MOTION TO STRIKE  
PLAINTIFF’S RESPONSE TO HER MOTION TO DISMISS**

1. On or about December 23, 2004, Plaintiff Braithwaite’s (“Braithwaite”) complaint alleging violations of 42 U.S.C. ' 1983 against numerous DOC and Medical personnel was filed in the United States District Court for the District of Delaware. (D.I. 2). On or about March 21, 2005, Braithwaite amended his Complaint to add DOC defendant Violet Dunn. (D.I. 9). Although defendant Dunn was subsequently dismissed in the Court’s Memorandum Opinion issued on or about March 29, 2006, the Court permitted Braithwaite to amend his Complaint as directed in the Court’s Memorandum. *Id.* (D.I. 63)

2. On or about May 1, 2006, Braithwaite filed an Amended Complaint alleging Eighth and Fourteenth Amendment violations against defendant Dunn. (D.I. 74). On or about October 30, 2006, defendant Dunn filed a Memorandum of Points and Authorities in Support of her Motion to Dismiss/Motion for Summary Judgment with affirmative defenses. (D.I. 85).

3. Braithwaite filed an Answering Brief on or about November 13, 2006. (D.I. 86).

On or about November 20, 2006, defendant Dunn filed a Reply Brief. ( D.I. 87).

4. On or about December 4, 2006, Braithwaite filed a response to Dunn's Reply Memorandum (*Plaintiff's Response to Violet Dunn's Motion to Dismiss*). (D.I. 88). This response appears to be a second Answer filed by Braithwaite.

5. Briefing on this matter was completed under the clear terms of D.Del. L.R. 7.1.2., which states in pertinent part:

(a) *Briefing and affidavit schedule* . . . Unless otherwise ordered by the Court, the briefing and affidavit schedule for presentation of all motions shall be : (1) the opening brief and accompanying affidavit(s) shall be served and filed on the date of the filing of the Motion; (2) the answering brief and accompanying affidavit(s) shall be served and filed no later than 10 days after service and filing of the opening brief; (3) The reply brief and accompanying affidavit(s) shall be served and filed no later than five days after service and filing of the answering brief.

\* \* \* \* \*

(c) *Citation of subsequent authorities.* No additional briefs, affidavits, or other papers in support of or in opposition to the motion shall be filed without prior approval of the Court, except that a party may call to the Court's attention and briefly discuss pertinent cases decided after a party's final brief is filed or after oral argument.

Braithwaite's latest response should be stricken as it clearly violates D. Del. L.R. 7.1.2 (a) and (c). There is nothing in the docket nor has counsel received any notice from Braithwaite that he sought prior approval from the Court before filing this latest document. While defendant Dunn does not dispute Braithwaite's right to seek redress for perceived violations of his rights, he must do so pursuant to the Court's rules so that the parties and the Court will be aware of the specific factual and legal issues to be decided in a pending case.

WHEREFORE, defendant Dunn respectfully requests that this Honorable Court strike Braithwaite's most recent Answering Memorandum filed on or about December 4, 2006, as Braithwaite's motion is outside the scope of pleadings permitted by D. Del. L.R. 7.1.2.

**DEPARTMENT OF JUSTICE  
STATE OF DELAWARE**

/s/ Ophelia M. Waters  
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Dated: December 8, 2006

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FOR THE DISTRICT OF DELAWARE**

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| v.                              | ) | C.A. No. 04-1542-GMS   |
|                                 | ) |                        |
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|                                 | ) |                        |
| Defendants.                     | ) |                        |

**ORDER**

**IT IS SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2006, that  
*Plaintiff's Response to Defendant Violet Dunn's Motion to Dismiss* filed on or about  
December 4, 2006, violates D. Del. L.R. 7.1.2 (a) and (c) and should be stricken.

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Judge Gregory M. Sleet

***CERTIFICATE OF SERVICE AND MAILING***

I hereby certify that on December 8, 2006, I electronically filed *State Defendant Violet Dunn's Motion to Strike Plaintiff's Response to Violet Dunn's Motion to Dismiss* with the Clerk of Court using CM/ECF. I hereby certify that on December 8, 2006, I have mailed by United States Postal Service, the document to the following non-registered participant: Kevin C. Brathwaite; SBI #315294; Delaware Correctional Center; 1181 Paddock Road; Smyrna, DE 19977.

**STATE OF DELAWARE  
DEPARTMENT OF JUSTICE**

/s/ Ophelia M. Waters  
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